

**TRANSLATION**

**PATENT COOPERATION TREATY**

**PCT**

**INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>25814 WO</b>	<b>FOR FURTHER ACTION</b>		See Form PCT/IPEA/416
International application No. <b>PCT/EP2004/012455</b>	International filing date ( <i>day/month/year</i> ) <b>04.11.2004</b>	Priority date ( <i>day/month/year</i> ) <b>05.11.2003</b>	
International Patent Classification (IPC) or national classification and IPC <b>B01 L3/00, G01 N1/31</b>			
Applicant <b>EINSLE, Xaver</b>			

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <b>6</b> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of <b>1</b> sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>
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<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/EP2004/012455

## Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 

This report is based on translations from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
 
  - international search (Rule 12.3 and 23.1(b))
  - publication of the international application (Rule 12.4)
  - international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):
 

the international application as originally filed/furnished  
 the description:  
 pages 1-25 \_\_\_\_\_ as originally filed/furnished  
 pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 the claims:  
 nos. 1-11 / pages 1, 2 \_\_\_\_\_ as originally filed/furnished  
 nos.\* \_\_\_\_\_ as amended (together with any statement) under Article 19  
01.09.2005 with letter  
 nos.\* 12-15 / page 3 \_\_\_\_\_ received by this Authority on of 23.08.2005  
 nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 the drawings:  
 sheets 1/5-5/5 \_\_\_\_\_ as originally filed/furnished  
 sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3.  The amendments have resulted in the cancellation of:
 

the description, pages \_\_\_\_\_  
 the claims, nos. \_\_\_\_\_  
 the drawings, sheets/figs \_\_\_\_\_  
 the sequence listing (*specify*): \_\_\_\_\_  
 any table(s) related to sequence listing (*specify*): \_\_\_\_\_
4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 

the description, pages \_\_\_\_\_  
 the claims, nos. \_\_\_\_\_  
 the drawings, sheets/figs \_\_\_\_\_  
 the sequence listing (*specify*): \_\_\_\_\_  
 any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/EP2004/012455

**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

## 1. Statement

Novelty (N)	Claims	1–14	YES
	Claims	15	NO
Inventive step (IS)	Claims	1–14	YES
	Claims	15	NO
Industrial applicability (IA)	Claims	1–15	YES
	Claims		NO

## 2. Citations and explanations (Rule 70.7)

Reference is made to the following documents:

D1: US-A-5 681 741 (ATWOOD JOHN G ET AL), 28 October 1997  
(1997-10-28)

D2: US-A-5 346 672 (STAPLETON MARILYN J ET AL),  
13 September 1994 (1994-09-13)

D3: US-A-4 847 208 (BOGEN STEVEN A), 11 July 1989  
(1989-07-11)

D4: WO 00/63670 A (CYTOLOGIX CORP), 26 October 2000  
(2000-10-26)

1. The application fails to meet the requirements of PCT Article 33(1) because the subject matter of claim 15 is not novel (PCT Article 33(2)).

1.1 Document D1 discloses (the references in parentheses are to D1) a method for wetting specimens using a base provided with spacers (figure 32), with a frame for holding the base (figure 29, reference sign 28), wherein when the base is placed on a specimen slide the periphery initially remains open because of the spacers (column 23, lines 31 to 33), and the periphery is closed when a force is applied to the frame (figures 28 and 29).

**INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**

International application No.

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<b>Box No. V</b>	<b>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</b>
<p>1.2 It is noted that claim 15 is not limited to platforms as defined in claims 1 to 14. Because of the use of the phrase "more particularly", the reference to claims 1 to 14 is only optional (see also Box VIII below).</p> <p>2. Document D1 is considered to be the prior art closest to the subject matter of claim 1. The subject matter of claim 1 differs from the known platform in that the base is joined to the frame by a bearing arrangement which also functions as a seal.</p> <p>2.1 The subject matter of claim 1 is therefore novel (PCT Article 33(2)).</p> <p>2.2 The problem addressed by the present invention can thus be seen as that of providing an alternative device for wetting a specimen slide.</p> <p>2.3 The solution proposed in claim 1 of the application involves an inventive step (PCT Article 33(3)) because it is not known either from D1 or from any of the other available prior art documents.</p> <p>3. Claims 2 to 14 are dependent on claim 1 and therefore also meet the PCT requirements in respect of novelty and inventive step.</p>	

## Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

4. Claim 15 is unclear (PCT Article 6). It is apparent from the description (for example, page 2) that one of the essential features of the invention is the fact that the bearing arrangement between the base and the frame is used both as a bearing arrangement and as a seal, and that the bearing arrangement holds the base and the frame in a particular defined position so as to ensure that there is a laterally open space. This feature is specified in claim 1, for example (first functional position – base projecting away from frame). The details specified in claim 1 relating to the bearing arrangement in connection with the laterally open space are not included in claim 15. Thus claim 15 is not supported by the description and is therefore unclear.
  
5. Claims 1 and 15 also fail to include the following essential features:
  - The frame is elastically joined to the base by a bearing arrangement (page 21, line 7; page 22, lines 3 to 7).
  - The bearing arrangement has three portions: a first portion acting as a seal to completely seal the space between the base and the specimen slide in the second functional position (page 19, lines 1 to 22), a second portion adjoining the base, and an elastic third portion (page 19, line 9 ff.; page 21, line 7 to page 22, line 8).

Thus both independent claims are lacking essential

## Box No. VIII Certain observations on the international application

technical features which ensure the desired functions (results) of sealing and elastic movability between different positions. The description does not describe or suggest any alternative technical features. Claims 1 and 15 are therefore unclear (PCT Article 6).

6. Claims 1 and 15 also fail to specify the opening in the surface of the base (page 22, lines 16 to 19) that allows the introduction and extraction of liquids. According to the description this feature is always present, and therefore it is essential. There is thus inconsistency between the description and the claims, because the claims go beyond what is contained in the description. Claims 1 and 15 are therefore unclear (PCT Article 6).
  
7. Contrary to the requirements of PCT Rule 5.1(a)(ii), the description does not cite documents D1 to D4 and also fails to give an account of the relevant prior art disclosed therein.